

Neutral citation No: [2012] NIQB 82

Ref: **WEA8630**

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: **30/10/2012**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

Walsh's (John Christopher) Application - Writ of Coram Nobis [2012] NIQB 82

**AN APPLICATION BY
JOHN CHRISTOPHER WALSH
FOR A WRIT OF CORAM NOBIS**

WEATHERUP J

[1] John Christopher Walsh has made a personal application in writing for a Writ of Coram Nobis for review of a judgment of the Court delivered on 18 June 2012 in an application for Judicial Review reported as Walsh's Application, neutral citation [2012] NIQB 55.

[2] I have not previously come across the Writ of Coram Nobis. It appears to be a Writ of Error for review of a judgment to be undertaken by the Court that delivered the judgment and based on error by the Court. While the Writ developed at common law I doubt if the procedure survived the appeals process introduced by the Judicature (Ireland) Act 1875. The first schedule to the 1875 Act set out the Rules of Court and Order LVIII dealt with appeals and Rule I provided that "... proceedings in error shall be abolished."

[3] Prior to the Judicature Acts in England and Ireland the decisions of the Courts of Common Law and of Equity could be reviewed by Writs of Error. In the Common Law Courts this was undertaken by the Writ of Coram Nobis and in the Court of Equity by a Bill of Review. The position in relation to a Bill of Review was considered by the Court of Appeal in England and Wales in Cinpres Gas Injection v

Melea [2008] EWCA Civ 9. The Court of Appeal endorsed the view that the procedure had long since lapsed because applications for rehearing on the ground of fresh evidence had for generations been made only to the Court of Appeal. The Court of Appeal concluded that there was no ground on which a court of first instance could reopen its own decision other than for fraud. Accordingly the application for a Bill of Review failed as a matter of jurisdiction.

[4] The Department of Justice, the respondent in the application for Judicial Review, made a written response by which it was contended that the Writ of Coram Nobis is obsolete and that the process was abolished in civil cases by the Judicature (Ireland) Act 1875.

[5] The judgment of 18 June 2012 was delivered upon the application for Judicial Review of a decision of the Department of Justice refusing the applicant compensation for miscarriage of justice. By the judgment the matter was referred back to the Department of Justice for reconsideration.

[6] The applicant had been convicted of possession of explosives in 1992. His conviction was ultimately quashed by the Court of Appeal on 16 March 2010 (R v Walsh [2010] NICA 7).

[7] The error relied on by the applicant in the judgment of 18 June 2012 relates to evidence at his trial that a trace of RDX explosive had been detected on the applicant's left hand. Dr Murray, Forensic Scientist gave evidence of the RDX having been detected and that the known sources of RDX were explosives. The applicant refers to the evidence of another Forensic Scientist Dr Lloyd who gave evidence on the applicant's appeal to the Court of Appeal in 2001 and who took issue with Dr Murray's evidence and referred to an RDX mimic substance that was used in the manufacture of foam plastics. Dr Murray was not called to give evidence to the Court of Appeal in 2001.

[8] The applicant contends that Counsel for the Department of Justice on the application for Judicial Review misled the Court by proceeding on the basis of Dr Murray's evidence as to the presence of RDX explosive on the applicant's left hand. Further the applicant contends that as Counsel for the Department also acted as Counsel for the Police and the Prosecution Service there was a conflict of interest that affected his independence and that he should not have continued to act for the Department. Thus it appears to be contended that the referral back to the Department by the decision of 18 June 2012 is tarnished by error relating to the evidence of RDX explosive on the applicant's left hand and by the absence of legal independence on the part of the Department's legal representative.

[9] Further the applicant has raised complaints about his own Counsel and the manner in which the application for Judicial Review was presented. Thus it appears to be further contended that the presentation also tarnished the decision to refer the matter back to the Department for reconsideration.

[10] If I were entitled to reconsider the judgment of 18 June 2012, which I am satisfied is not the case in the circumstances, I would not alter the judgment on the grounds advanced by the applicant. The issue of entitlement to compensation is a matter for the Department. By the judgment I referred the matter back to the Department for reconsideration. The applicant's point about the evidence of Dr Murray and Dr Lloyd is a point that may be outlined to the Department for the purpose of the reconsideration of its decision on the application for compensation. The point goes to the evidence concerning possession of explosives and wrongful conviction and is a matter for the Department.

[11] The point about Counsel for the Department does not relate directly to the reconsideration of the decision on compensation. However it is a matter that the applicant may also raise with the Department and the Department will take it into account to the extent that it is considered to have any bearing on the reconsideration.

[12] In any event I understand that the point about Counsel for the Department is the subject of a complaint to the Bar Council. Any impropriety by Counsel for the Department will be dealt with by the complaints and discipline procedures applicable to members of the Bar.

[13] The applicant made a further written submission which emphasised the need for the independence and impartiality of a tribunal for the purposes of a fair hearing under article 6 of the European Convention on Human Rights. The applicant referred to a decision of the European Court of Human Rights in Abraham Gurkan v Turkey (Application No 10987/10) 3 July 2012. By this the applicant challenged the position of the Department as decision-maker on the application for compensation both in relation to the history of its involvement with matters concerning the applicant and with the position of Counsel for the Department as referred to above.

[14] The applicant complains about the Department and the Minister making decisions about the applicant's involvement in the matters in respect of which he was convicted. Parliament has accorded to the Department the role of determining entitlement to compensation for miscarriage of justice. The Department is obliged to conduct the exercise in accordance with its proper statutory remit and is subject to the supervisory jurisdiction of the Court. That jurisdiction extends to the Department's reconsideration of the application for compensation.

[15] Further the applicant complains that his own Counsel on the application for Judicial Review failed to address the error on which he relies and contributed to the Court's reference back to the Department where he considers there is an absence of an impartial and independent tribunal to reconsider his claim for compensation. Again I understand that the conduct of the applicant's Counsel is the subject of a complaint to the Bar Council. Again any impropriety by Counsel for the applicant will be dealt with by the complaints and discipline procedures applicable to members of the Bar.

[16] I do not have jurisdiction to alter the decision issued on 18 June 2012 and now reported as Walsh's Application, neutral citation [2012] NIQB 55. Even if I did have jurisdiction I would not, for the reasons outlined above, alter the decision on the grounds advanced by the applicant.